IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6175 of 1999

with

SPECIAL CIVIL APPLICATION No 5274 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD

Versus

KALPESHKUMAR NARANBHAI PATEL

Appearance:

1. Special Civil Application No. 6175 of 1999
   MR SB PANDIT for Petitioner No. 1
   MR SHAILESH C PARIKH for Petitioner No. 1
   MR BS PATEL for Respondents No. 1-4
   MRS RANJAN B PATEL for Respondents No. 1-4
   MR RM CHAUHAN ASSTT GOVERNMENT PLEADER for Respondent No. 5
2. Special Civil Application No. 5274 of 1999
   MR RM CHAUHAND ASSTT GOVERNMENT PLEADER for Petitioner No. 1
   MR BS PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/11/2001

COMMON ORAL JUDGEMENT

In Special Civil Application No.6175/1999, this Court has heard Mr.S.B.Pandit, learned advocate appearing on behalf of the petitoner - Gujarat Housing Board and Mr.R.M.Chauhan, learned AGP appearing on behalf of the respondent No.5 so also Mr.B.S.Patel, learned advocate for respondent Nos.1 to 4.

This Court has also heard Mr.R.M.Chauhan, learned AGP appearing on behalf of the petitioner and Mr.B.S.Patel, learned advocate for respondent Nos.1 to 3 in Special Civil Application No.5274/1999.

#. So far as Special Civil Application No.6175/1999 is concerned, this Court has issued RULE on 20th August, 1999 and also issued notice as to interim relief returnable on 16th September, 1999. However, during the interim period, by way of ad-interim relief upto 16th Sept.,1999 has stayed the operation and implementation of the impugned order at Annexure-A dated 13th January, 1999, subject to conditions that the petitioner shall not allot, dispose of or otherwise, deal with the property and / or tenements constructed on the land in question. This ad-interim order has been extended from time to time and subsequently, it has been clarified on 14th December, 1999. In Special Civil Application No.6175 / 1999, on behalf of the respondents, affidavit-in-reply has been filed by one Kalpeshkumar Naranbhai Patel as respondent No.1 on 17th December, 1999, however, no rejoinder has been filed by the petitioner against the said reply filed on behalf of the respondent No.1. Similarly, in Special Civil Application No.5274/99, one Kalpeshkumar Naranbhai Patel - respondent No.1 has filed affidavit-in-reply on 3rd October, 2001. However, no rejoinder has been filed by the petitioner.

Whereas, in Special Civil Application No.5274 / 1999, this Court has issued RULE returnable on 19th August, 1999 by order dated 21st July, 1999 and thereafter on 19th August, 1999, by way of ad-interim relief granted ad-interim relief staying operation and implementation of the impugned order dated 30th January, 1999 coupled with direction to parties to maintain status quo as to title and possession as it prevails today. This Court has extended the ad-interim relief granted earlier from time to time and by order dated 6th

December, 1999 further ordered to remain the earlier order to continue.

#. In both these petitions, Special Civil Application Nos. 6175 and 5274 of 1999, the order dated 30th January, 1999 passed by the Appellate Tribunal under the provisions of Urban Land Ceiling Act, has been challenged by the Gujarat Housing Board and the State Government respectively and therefore, considering the fact that these two petitions are based on the similar facts and circumstances and since the challenge in these two petitions is common one, they are heard together and same are proposed to be disposed of this common judgment.

#. The brief facts giving rise to these two petitions are narrated as under :-

So far as Special Civil Application No.6175/1999 is concerned, according to the petitioner - Gujarat Housing Board, on coming into force of the Urban Land [Ceiling and Regulation] Act, 1961 [hereinafter referred to as the `the Act, 1976'] respondent No.4 Naranbhai Hirabhai Patel, who is father of the respondent Nos.1 & 2 viz. Kalpeshkumar Naranbhai Patel and Nileshkumar Naranbhai Patel and husband of the respondent No.3 Minaxiben Naranbhai Patel, had filed statement in Form -I under Section 6[1] of the Act in respect of the vacant land held by him. The said statement was filed on behalf of the family consisting of himself, his wife and two unmarried sons. According to the petitioner, the Gujarat Housing Board on 25th October, 1982 after preparing final statement, the Competent Authority passed on order declaring 7424 sq.mtrs. of land comprising Survey No.327/P, 329/1 and 329/2 as excess vacant land. Thereafter, the competent authority has issued Notification under Section 10[1] of the Act for the aforesaid excess vacant land was proposed to be acquired by the State Government on 15th January, 1983. The competent authority has invited objections from the interested persons. Thereafter, on 30th July, 1983 notification under Section 10[3] of the Act was passed by the Competent Authority and published in the Government Gazette dated 13-10-1983, notifying that the excess vacant land vested absolutely in the State Government free from all encumbrances. Thereafter, the competent authority has issued further notice under Section 10[5] of the Urban Land Ceiling Act on 14th / 17th February, 1984 directing the respondent No.4 to surrender possession of excess vacant land of 7424 sq.mtrs. to the Additional Collector, Vadodara on behalf of the State Government. Thereafter, the respondent No.4 has filed

Appeal No.4 has filed appeal being Appeal No. Vadodara/ 1052/84 preferred by respondent No.4 under Section 33 of the Act challenging the order dated 25-10-1982 passed by the Competent Authority declaring excess vacant land. According to the petitioner Gujarat Housing Board, said appeal has been dismissed and not admitted by the Appellate Authority by order dated 31st July, 1986. Thereafter, the State Government has taken over the possession of the land in question through Mamlatdar on 2nd January, 1990. According to the Gujarat Housing Board, in the year 1991, the respondent No.4 filed Regular Civil Suit No.1501 / 1991 before the Civil Judge [S.D.], Vadodara against the State Government claiming right of way from acquired land for access of land retained with him. Thereafter, on 26th December, 1996, possession of the land acquired by the State Government was handed over to the Petitoner for construction of 141 tenements for weaker sections of the society under Section 23 of the Urban Land Ceiling Act. on 6th January, 1998 the Vadodara Municipal Corporation sanctioned lay out and building plan submitted by the Petitoner for construction of 141 tenements as aforesaid. The Petitoner further pointed out that the respondent Nos.1 & 2 who are sons and the respondent No.3 who is wife of the respondent No.4 filed Appeal being Appeal No. Baroda /54/98 under section 33 of the Act before the Urban Land Tribunal challenging the earlier order dated 25th October, 1982 passed by the competent authority and declaring the excess vacant land held by the respondent No.4. According to the petitioner though the period of limitation for filing the appeal is 30 days, the respondent Nos.4 preferred appeal almost after 16 years and respondent Nos.1 to 3 had not assigned any reason for such inordinate long delay for filing the appeal under Section 33 of the Urban Land Ceiling Act. Thereafter, the Urban Land Tribunal passed order on 30th January, 1999 quashing and set aside the order dated 25th October, 1982 passed by the competent authority and all subsequent orders and proceedings and accordingly remanded the matter back to the competent authority to decide the matter afresh after affording reasonable opportunity of hearing and producing the documents. According to the petitioner, the net effect of the order is that the proceedings, orders and actions regarding declaration of excess vacant land, vesting thereof in the State Government and allotment of the same to the Gujarat Housing Board stood cancelled. The petitioner further pointed out that on the basis of the aforesaid order dated 30th January, 1999 passed by the tribunal, respondent No.4 filed application in Regular Civil Suit No.1501 of 1991 before the Civil Judge [S.D.] to join

Gujarat Housing Board - present petitioner as party respondent in the said suit and also filed application at Exh.5 on the same day for injunction restraining the Petitoner from making further construction on the land. This application and interim relief application at Exh.5 have been filed by respondent No.4 on 19th February, 1999. Thereafter, Civil Judge [Baroda] passed interim order directing the petitioner to maintain status quo on 23rd February, 1999. The petitioner, in the mean time, had already given contract to a building contractor for construction of 141 tenements and the construction work had already commenced. According to the petitioner, 121 tenements construction work has been completed upto plinth level, in some cases upto lintal level and in others upto slab level. This wise, about 35 % of the total construction work has been completed incurring an expenditure of about Rs.20 lacs and building materials worth lacks of rupees are lying on the construction site. As a result of the stay order, construction activity has to be stopped completely entailing huge loss to the Petitoner and 141 families belonging to economically weaker section of the society are deprived from getting early housing accommodation for whom construction work is undertaken. In light of these facts, present petitioner Gujarat Housing Board has challenged order passed by the Appellate Tribunal dated 30th January, 1999.

Similarly, in respect of Special Civil Application No.5274/1999, State Government has filed the present petition challenging the order passed by the tribunal dated 30th January, 1999. According the case of the State Government, pursuant to the order passed by the competent authority on 25th October, 1982 and thereafter all the proceedings upto stage of Section 11, have been completed by the competent authority and thereafter, an appeal was filed by one Naranbhai Haribhai Patel who is father of the respondent Nos.1 & 2 and husband of the respondent No.3 before the appellate tribunal. However, the said appeal was dismissed and not entertained by the tribunal by order dated 31st July, 1986. Thereafter, the present respondent Nos.1 to 3 have filed appeal being Appeal No.54 / 1998 before the tribunal challenging the very same order dated 25th October, 1982 and the said appeal was allowed by the tribunal and that order is under challenge before this Court.

#. Learned advocate Mr.S.B.Pandit, appearing on behalf of the Petitoner - Gujarat Housing Board has advanced many fold submissions in support of his petition. According to Mr. Pandit, the present respondent Nos.1 to 3 have made false statement before the competent

authority and the appellate authority. Mr. Pandit, learned advocate for Gujarat Housing Board of has submitted that the respondent Nos.1 and 2 were not major in the year 1976 but in fact, the respondent Nos. 1 & 2 were minor at the relevant time. According to Mr. Pandit, the second false statement has been made by the respondent Nos.1 to 3 that their holdings should be considered separately and given option to retain the land of their choice as per the Ceiling Act separately. In fact, they did not own or hold any vacant land or interest therein in their names so as to claim separate ceiling limit for them. According to the petitioner, the third false statement has been made to the effect that holdings mentioned in Form No.1 which was filed by the father - respondent No.4, there were residential plots existing prior to 1976. In fact, in the said form, the respondent No.4 father has stated clearly that no building residential or non residential had existing on any lands held by him. The forth false statement to the effect that the disputed land was not within the Urban Development Plan in the year 1976. In fact, the land was included in the industrial area of the Baroda Municipal Corporation Plan as per the statement filed by their father. Over and above respondent Nos.1 to 3 had also suppressed the material fact as under :-

[a] That they suppressed the very fact that the order of the competent authority challenged by them was passed on 25th October, 1982 and they were preferring appeal after period of 16 years thereafter.

[b] They suppressed the fat that in the year 1984, their father had already challenged the very same order dated 25th October, 1982 passed by the competent authority in Appeal No. Baroda / 1052 / 84 before the Urban Land Tribunal and that the said appeal was dismissed by order dated 30th July, 1986.

[c] They also suppressed the fact that the excess vacant land declared by the competent authority had absolutely vested in the State Government and the State Government has taken over the possession thereof and the land has been allotted to the petitioner Board as also the construction of housing tenements for poor and weaker section of the society and construction work for 141 tenements was under progress at the time of filing of the appeal.

#. Mr.S.B.Pandit, learned advcoate for the petitioner Guajrat Housing Board while elaborating his submissions has contended that the present respondent Nos.1 to 3 have no locus stani to file the appeal under Section 33 before the Urban Land Tribunal challenging the order passed against the father of the respondent Nos.1 and 2 and the husband of the respondent No.3 because the father had already filed appeal before the tribunal and the said appeal has already been dismissed on 31st July, 1986. Therefore, the respondent Nos.1 to 3 are not having any separate legal rights distinct from the father and husband to challenge the order passed by the competent authority dated 25th October, 1982. Learned advocate Mr. Pandit has also submitted that property in question was not Hindu Undivided Family property and as such, no documentary evidence has been produced by the respondent Nos.1 to 3 before the appellate tribunal. He also submitted that Form No.1 which has been filed by the respondent No.4, a copy thereof has been produced on record of this petition by the petitioner board at pg.30, wherefrom the relevant page is pg.33, wherein, Column No.8 & 9 require the person filing the form to explain as to how the land in question has been acquired by the respondent No.4. However, the answer to these two column given by the respondent No.4 is "on the basis of the tenancy right", similarly, on pg.34 it is clearly shown that this land in question is subject to restricted condition under the provisions of the Tenancy Act. Therefore, learned advocate Mr. Pandit submitted that the land in question which was held by the respondent No.4 is not ancestral land / property but since he was tenant of the land in question and on that basis, he was in possession of the land in question. He also submitted that at pg.35, according to Column No.1, it is specifically mentioned by the respondent No.4 that the land in question has been acquired as owner by the respondent No.4 and for Item No.9, no detail has been given which in fact requires the person to explain as to the details pertaining to undivided share of the HUF. Therefore, no detail has been given by the respondent NO.4 against Item No.9, therefore, his submission is the land in question belongs to the respondent No.4 as tenant under the provisions of the Tenancy Act and therefore, according to Mr. Pandit, it is abundantly clear that the land in question was self acquired land and / or property and not at all ancestral property of the respondent No.4. In support of above submissions, Mr. Pandit, learned advocate for the petitioner - Housing Board has relied upon certain definitions of words like `family', `person' and `agriculture' given under the Urban Land Ceiling Act under Section 2, which runs as under :-

2[f] "family", in relation to a person, means the individual, the wife or husband as the case may be, of such individual and their unmarried minor children."

Explanation :- For the purpose of this cluase, "minor", means a person who has not completed his or her age of eighteen years;

2.[h][i] "Person" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;

2 [2][o][A] "agriculture" includes horticulture, but does not include :-

[i] raising of grass
[ii] dairy farming
..... "

Relying on the definitions of the `words' referred above as per the provisions of the Urban Land [Ceiling and Regulations] Act, 1976, Mr. Pandit, learned advocate Mr. Pandit has relied upon the decision of this Court in case of HARGOVINDBHAI PRABHUBHAI PATEL AND ANR VS. STATE OF GUJARAT reported in 1993 [2] GLR pg.1100 and submitted that in view of the definition of the word "family", as given under Section 2[f], it would include the individual, wife or husband as the case may be, and such individual and their unmarried minor children. Therefore, the share which was earmarked for a minor son shall have to be clubbed together with the share of the father and minor will not be entitled to hold separate share. Relying on this proposition held by this Court, he submitted that after the land has been declared excess, whatever land remains with the father as one unit, minor may have share, according to Hindu Law but the minor cannot have any separate share upon the excess land which is declared by the competent authority. He also submitted that minor are not entitled to any separate unit looking to the definition of the family given under Section 2[f] of the Act. He further submitted that the respondent No.4 has filed affidavit dated 7th Sept., 1982 before the competent authority, wherein he specifically admitted that the land in question is in the name of the respondent No.4, his wife and two minor sons. Mr. Pandit, learned advocate has also submitted that the respondent No.4 has admitted that the respondent Nos.1 to 4 not having any share upon Hindu Undivided Family and therefore, according to the case of

the petitioner - Board, looking to the affidavit filed by the respondent No.4, the respondent No.4 was only the owner of the property and that property is self acquired on the basis of the Tenancy Rights accrued by the respondent No.4 under the provisions of the Tenancy Act. Therefore, the land in question was not ancestral property of the forefathers of the respondent No.4. Mr. Pandit, learned advcoate has also submitted that the wife of the Petitoner is also not entitled to any separate unit and all the respondents are the members of the one family residing jointly. Mr. Pandit, learned advcoate has also submitted that even in filing the appeal by the respondent Nos.1 to 3 after period of 16 years, no reason have been given in the appeal memo and the tribunal has not discussed this aspect of inordinate delay of 16 years and as such, no finding has been given by the tribunal as to why the said appeal has been admitted after the period of 16 years and therefore, the order of the tribunal is illegal. He, therefor, relied upon the provisions of Section 33 of the Act and pointed out that the appeal is required to be filed within 30 days unless the appellant satisfied that the appeallant and was prevented by sufficient cause from filing the appeal in time, otherwise, the tribunal has not authority and jurisdiction to condone the delay. However, Mr. Pandit, learned advocate has relied upon two decisions of this Court reported in 1993 [3] GLR pg.2079 and 2001 [1] GLR pg.16 the decision rendered by the Full Bench.

#. Mr. Pandit, learned advocate has also submitted that the respondent Nos.1 to 4 have not produced on record any such exemption application which was submitted by the them under Section 20 of the Act. Therefore, he submitted that the contention raised by the appellant before the tribunal that Section 20 Exemption Application was pending before the authority and therefore, the order passed by the competent authority is illegal, but the fact is that no such application is produced by the respondent Nos.1 to 4. However, he submitted that the precondition for preferring Section 20 Exemption Application is there must be agricultural land but in the present case, according to Mr. Pandit, looking to the definition of Section 2[o][2][A][1] explaining the word `agriculture', the land on which grass is raised, cannot be said to be agriculture land and therefore, contention of pendency of the exemption application is not at all correct. However, Mr. Pandit submitted that such application has been rejected by the competent authority on 19th January, 1985. He submitted that at pg.78, the order dated 10th Sept. 1980, wherein it is mentioned that in respect of Survey No.327, 329/1 and 329/2, for

exemption, separate order will be passed but according to Mr. Pandit, at pg.30 so far as the Item No.9 is concerned, the respondent No.4 has not given any details when there specifically required to fill up the details in the column explaining as to whether any application for exemption either under Section 19 or 20 has been filed or not ?, or likely to be filed or not ? Against the said column, the answer given by the respondent No.4 is "No". Therefore, according to Mr. Pandit the contention of the respondent No.4 as to pendency of such application under Section 20 is absolutely incorrect. He also submitted that the respondent Nos.1 to 3 have made false statement even before the appellate tribunal while filing the appeal and considering the such false statement, the tribunal has passed order in their favour by order dated 30th January, 1999. It is also his submission that similarly on two occasions, affidavit filed before this Court at pg.62, wherein also a clear false statement has been made by the respondent Nos.1 & 2 in respect of date of birth. He also submitted that the date of birth of minor son Kalpeshkumar is recorded as 1st January, 1974 and in respect of second minor son Nileshkumar, his date of birth is recorded as 11th June, 1976. Therefore, at the relevant time, when the order was passed by the competent authority, admittedly both were minors. Mr. Pandit, learned advocate has also submitted that the date of birth of respondent No.4 mentioned in Form filled up by him is recorded as 21st November, 1945. Therefore, looking to the age of the respondent No.4 and date of the order passed by the competent authority on 25th October, 1982, naturally both these sons cannot become major. However, as per the original file and record of the authority, school certificate is produced by the respondent No.4 wherein the date of birth is mentioned 1st January, 1974 in respect of Kamleshkumar and so far as Nileshkumar is concerned, his date of birth is recorded as 11th June, 1976. In light of above facts, Mr. Pandit submitted that a clear false statement has been made in the affidavit filed by one Kalpeshkumar and therefore, strict necessary actions require to be initiated by this Court against the respondent No.1 Kalpeshkumar. Mr. Pandit, learned advocate also submitted that this is not merely a false statement made by Kalpeshkumar Naranbhai Patel but by making this false statement, he obtained orders in their favour on 30th January, 1999. Therefore, according to Mr. Pandit, the respondent No.1 is responsible for making false statement on affidavit despite of full knowledge and even at the time of passing of the order by the competent authority on 25th October, 1982, the respondent No.1 and his brother both were minors. He

also submitted that even looking to the affidavit filed by the father before the competent authority on 7th September, 1982, in said affidavit also, the father respondent No.4 Naranbhai Hirabhai Patel has mentioned that his both sons are minor and the other important aspect is, when said affidavit is sworn on 7th September, 1982, the respondent No.4 was aged about 37 years. In light of above facts, Mr. Pandit has submitted that it is serious aspect to the effect that the respondent No.1 was aware of his date of birth as also the date of birth of his brother and knowing fully of this fact, made a false statement on oath for getting unlawful gain by way of result in favour of the respondent Nos.1 to 4. Therefore, Mr. Pandit suggested that in such circumstances, this Court may consider all these aspects of the matter seriously and may initiate prosecution against the respondent No.1. Mr. Pandit, learned advocate has also submitted that similarly the respondent No.1 has made incorrect statement before the appellate tribunal to the effect that the time when the order was passed, the respondent No.1 and 2 were major and they were having independent right of hearing and on the basis of the said false statement in the affidavit accordingly pleaded that no opportunity of hearing was given to the respondent Nos.1 & 2 and therefore, the order passed by the competent authority is required to be quashed and set aside. Therefore, Mr. Pandit has submitted that this incorrect statement made by the respondent No.1 & 2 has been accepted by the tribunal and ultimately the tribunal has come to the conclusion that the respondent Nos.1 & 2 are entitled to independent hearing before passing the order by the competent authority on 25th October, 1982 and on that basis only the tribunal has allowed the appeal. Therefore, by making a false statement in respect of age of the respondent No. 1 & 2, the order was obtained in their favour and therefore also, serious action is required to be initiated against the respondent No.1.

#. Mr. Pandit, learned advocate for petitioner Housing Board has further submitted that on pg.26 of this petition, which is first page of the order of the tribunal in Appeal No.54 / 1998, wherein the tribunal has narrated the factual aspect of the respondent Nos.1 & 2 and accordingly narrated the factual aspects in the appeal memo. Therefore, the tribunal has considered the fact that the respondent Nos.1 & 2 who were appellant No.1 & 2 before the tribunal, were major in 1982 and therefore, they were entitled to separate holding in respect of the property of the father and therefore, the tribunal has arrived at the conclusion that since the

competent authority has not considered separate holdings in respect of the respondent Nos.1 & 2, the competent authority has committed gross error. However, Mr. Pandit, while highlighting the case before tribunal has submitted that the facts were brought to the notice of the tribunal that earlier appeal was filed by the father respondent No.4 has been dismissed by the tribunal on 31st July, 1986 but despite of this fact, the tribunal has not considered this aspect and second appeal against the said order was entertained by the tribunal and resultantly, the tribunal has committed gross error in allowing the appeal by order dated 30th January, 1999. Mr. Pandit, learned advocate has also submitted that the order passed by the competent authority on 25th October, 1982 and after period of 16 years, the appeal was filed by the respondent No.1 & 2 being Appeal No.54 / 1998 and mean while, equity has been created in favour of the present Petitoner and position of the land in question has been changed in favour of the petitioner and more over, considering the altered situation in favour of the petitioner, the order passed by the tribunal is required to be set aside. He also relied upon the decision of this Court in case of BAIL DHANI WIDOW OF HIRAMOTI Vs. STATE OF GUJARAT reported in 1996 [3] GCD pg.15. He also relied upon the observations made by this Court that the powers of State Government under Section 34 of the Act, 1976, the suo motu exercise of powers in revision after delay of four years on justifiable factual situation, delayed revision may be allowed but in the present case, during the intervening period of more than four years, the petitioner have spent huge amount and have made investment in raising dwelling units and therefore, considering the ground of delay and equity created in favour of the Petitoner, this Court has come to the conclusion that the revision is not maintainable after period of four years. He also submitted that the appeal filed by the father - respondent No.4 has been rejected only on the ground of delay. The appeal filed by the father - respondent no.4 after period of one and half years meaning thereby after period of 18 months, the appellate authority has not entertained the appeal No.1052/1984 filed by the respondent No.4 but the the very same authority - appellate tribunal has entertained the appeal after period of 16 years filed by the respondent Nos.1 to 3. Therefore, such approach by very authority in respect of very order is also arbitrary and therefore, his submission before this Court is that the principles of res judicata would apply, in a situation, when the order passed by the competent authority dated 25th October, 1982 was challenged by the father separately and wife and two minor sons have challenged

separately. Therefore, the order passed in appeal filed by the father - respondent No.4, wherein the appeal was dismissed on 31st July, 1986 and therefore the said order is binding to two sons and wife of the respondent No.4 in view of the fact that they belong to one family as well as person which includes two sons and wife. Therefore, Mr. Pandit submitted that the principles of res judicata would have applied the appeal filed by the respondent Nos.1 to 3. However, he submitted that there may not be any adverse effect as the State Government has rejected the request to exercise the powers under Section 34 of the Act, 1976 by letter dated 24th March, 1999. In short, his submission is that ultimately during the interim period, the petitioner is sufferer because the possession of the land in question has been handed over to the Petitoner on 26th December, 1996 and thereafter the Petitoner has already given contract to building contractor for construction of 141 tenements proposed to be allotted to the members belong to poor and weaker sections of the society. He also submitted that the construction work for some of the residential units upto plinth level and in some of the units upto lintel level and in the other units, construction upto slab level is already completed and thus, approximately 35 % construction work has been completed and already undertaken. It is also his submission that the petitioner Gujarat Housing Board has spent about more than Rs.20 lakhs and construction material worth lakhs of rupees are lying on the construction site. Mr. Pandit more emphathetically submitted that afterall the scheme of petitioner - Gujarat Housing Board is in the benefits of the members belong to the poor and weaker section of the society. Therefore, in such circumstances, during the interim period, equity has been created in favour of the present petitioner so also 141 family members of the weaker sections of the society and on that ground also, the order of the tribunal passed on 30th January, 1999 is required to be set aside. Lastly, Mr. Pandit, learned advocate has also submitted that heavy cost may be imposed on the respondents because on account of the order dated 30th January, 1999, which admittedly obtained on the basis of false statement, the petitioner Board has been put in hardships and inconvenience resulting into financial loss running into lakhs of rupees.

#. Mr.R.M.Chauhan, learned AGP representing the State of Gujarat who is petitioner in Sepcial Civil Application No.5274 / 1999 has submitted that he is adopting the contentions and arguments advanced by Mr.S.B.Pandit, learned advocate representing the cognate matter and therefore, he submitted that he is not repeating the same

for the sake of brevity. He also submitted that the order passed by the appellate tribunal in respect of Appeal No.54 / 1998 is erroneous and the order impugned in this petition is passed by the tribunal beyond jurisdiction and in violation of principles of res judicata and therefore, the order passed by the appellate tribunal in favour of the respondent Nos. 1 to 3 on the basis of the false statement despite of full knowledge, requires to be quashed and set aside. Mr.Chauhan, learned AGP has also submitted that the respondent No.1 who has filed the affidavit against the present petition, wherein also in para-10 the respondent No.1 Kalpeshkumar Naranbhai Patel has made categorical false statement that when the competent authority had decided the matter, the respondent Nos.1 to 3 who had got interest in the property and the respondent Nos.1 & 2 were major at the relevant time. Therefore, Mr.Chauhan, learned AGP has also submitted that the averments to the effect that they were major at the relevant time meaning thereby, they want to emphasis before the tribunal that when the competent authority has passed the order on 25th October, 1982, at that relevant time, they were major and this false statement has been considered by the tribunal. That the respondent No.1 Kalpeshkumar Naranbhai Patel has made false statement and in support of his submission, Mr.Chauhan, learned AGP has submitted from the original file, a copy of the school certificate which has been produced by the father before the competent authority and on examination of these two school certificates dated 14th Sept., 1982 issued by the Chief Teacher of Swami Vidhyanandandji Vidhya Vihar from Register No.4383, on date Nileshkumar who was studying at the relevant time in Standard-2/A and his date of birth is 11th June, 1976. Similary, school certificate issued by the very same school in respect of Kamleshkumar Naranbhai Patel shows that his date of birth is recorded as 1st January, 1974 and when he was studying in Standard 3-B. However, these school certificates are issued by the Chief Teacher on 14th September, 1982 and these certificates were obtained by the father with a view to produced the same before the office of the Collector. As per the original file of the authority, the State Government is having xerox certificates of the school certificates and as the State Government is also having original affidavit dated 7th September, 1982 filed by the father, wherein on two occasions it was mentioned that two sons were minor when the affidavit was sworn by Naranbhai Hirabhai Patel. Therefore, he submitted that looking to the official record which has been produced by the father and the fact admitted by the father, it is abundantly clear that despite of full knowledge, the respondent Nos.1 & 2 have

made false statement before the appellate tribunal in Appeal No.54/1998. Similarly, again false statement in affidavit-in-reply filed by the respondent NO.1 Kalpeshkumar Naranbhai Patel. Learned AGP Mr.Chauhan has also submitted that the order passed by the appellate tribunal in Appeal No.54/ 1998 dated 30th January, 1999 is erroneous and without jurisdiction and hence the same is required to be quashed and set aside by awarding the heavy cost on the respondents.

#. Learned advocate Mr.B.S.Patel, learned advocate appearing on behalf of the respondents has submitted that he is not able to dispute the date of birth which has been recorded in first order passed by the competent authority dated 25th October, 1982. On being shown the school certificates in respect of the respondent Nos.1 & 2 by Mr.R.M.Chauhan, learned AGP, Mr.B.S.Patel has fairly submitted that the date of birth recorded in the school certificates, are on record and considering the affidavit of the father at the relevant time, both the respondents viz. Kalpeshkumar and Nileshkumar were minor. Therefore, in absence of having any other evidence to dispute the date of birth, learned advocate Mr.B.S.Patel has accepted the position that when the order passed by the competent authority on 25th October, 1982, both these respondents namely Kalpeshkumar and Nileshkumar were minor. Learned Advocate Mr.Patel has accepted the position that when the order passed by the competent authority on 25th October, 1982, both these respondents viz. Kamleashkumar and Nileshkumar were minor. Learned advocate Mr.B.S.Patel has also submitted that when the competent authority has passed the order at that time, the application for exemption under Section 20 was pending as per the letter dated 10th Sept.,1980 of the State Government. He submitted that from the said letter, no decision has been taken by the authority in respect of the land situated at Danteshwar. Mr.Patel, learned advocate has submitted that according to the letter dated 10th September, 1980 of the State Government, Revenue Department which is at pg.78 of this petition, wherein it has been mentioned that no decision has been taken in respect of the land situated at Danteshwar bearing Survey No.327, 329/1 and 329/2. Therefore, once the application submitted by the father of the respondents under Section 20 of the Act, 1976 was pending, in that case, decision was taken by the competent authority during the pendency of the application and therefore, the same is bad and illegal and beyond the stage of Section 10[2] Notification of subsequent proceedings are also illegal and without jurisdiciton. He also relied upon the decision of this

Court in case of SAVITABEN R. PATEL VS. STATE reported in 1999 [1] GLR 860 and considering the observations made by this Court, submitted that once either the application under Section 10[2], 20 and 21 of the Act, 1976 has made so long as the decision on that application has not been taken, proceedings beyond stage of Section 10[2] must be stayed because there is no justification that the land is surplus. Learned advocate Mr.B.S.Patel has accepted the position that the respondents namely Kalpeshkumar Naranbhai and Nileshkumar Narantbhai both were minor when the competent authority has passed the order on 25th October, 1982. However, his submission before this Court is that despite of these facts, both these respondents are entitled to have their right of succession in the property belonging to father. He submitted that the property which belongs to the father was ancestral property and it was not self acquired property and therefore, the right of both sons upon the land in question remained intact and they are entitled to have interest upon the said land. It is further submitted that when exemption application is pending, thereafter, both the sons become major who have filed Appeal No.54/1998 and therefore, both the sons are entitled to challenged the order of competent authority dated 25th October, 1982 because they are having legal right and interest as well as right under the Hindu Law as coparcener and hence the appeal was filed legally and the same was rightly allowed by the tribunal. Mr.B.S.Patel, learned advocate has also relied upon the decision of the Apex Court in case of SUKHRANI V. HARI SHANKER reported in AIR 1979 SC 1436 and especially relied upon the observations made in Head Note-B, wherein the Apex Court has observed that even though there was no fraud, misrepresentation or undue influence, a partition can be reopened at the instance of a minor coparcener, despite the fact that his branch was represented by his father at the partition, if the partition was unfair or prejudicial to the interest of the minor. Mr.Patel has also relied upon the observations of Apex Court in case of RATNAM CHETTIAR AND OTHER VS. S.M.KUPPUSWAMI CHETTIAR AND OTHERS, wherein the Apex Court has observed that when the partition is effected between the members of the Hindu Undivided Family which consists minor coparceners it is binding on the minors also if it is done in good faith and in bonafide manner keeping into account the interests of the minors. However, a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. He also submitted that in

one more decision in case of Kakumanu Pedasubhayya and Another vs. Kakumanu Akkamma and another reported in AIR 1958 SC 1042 and relied on observations made in Head Note - [B], wherein the Apex Court has observed that the Hindu Law makes no discrimination between a major coparcener and a minor coparcener so far as their rights to joint properties are concerned. A minor is, equally with a major, entitled to be suitable maintained out of the family properties, and at partition, his rights are precisely those of a major. Mr.Patel, learned advocate has relying on the observation of the above referred decision submitted that the aforesaid decision of the Apex Court is relating to Hindu Law and therefore, he submitted that considering the fact that at the relevant time, both were minors but they were having legal rights as minor coparceners in respect of the property of Hindu Undivided Family and therefore, the appeal was rightly filed by the respondents sons and wife which was rightly allowed by the tribunal. Therefore, no interference is required by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

##. Learned advocate Mr.B.S.Patel has also raised another contention that the appellate tribunal while dealing with Appeal No.54 / 1998, passed the order dated 30th January, 1999 while setting aside the order passed by the competent authority and accordingly remanded the matter back to the competent authority. Therefore, when the appellate authority has remanded the matter back to the lower authority, in such event, no such petition can be filed challenging such remand order under Article 226 and 227 of the Constitution. Therefore, he relied upon the decision of this Court in case of NADIAD TAL KHARID VECHAN SANGH LTD. VS. STATE reported in 1997 [2] GCD 314 [Guj] and he relied upon the observations made by this Court that the revisional authority has allowed the application against the order of the appellate authority setting aside the resolution of the petitioner society removing respondents No.4 to 17 from the membership of petitioner society. However, the Court found that the order of the revisional authority is merely of remand for redeciding after examining the case afresh. Nothing final adjudicated on merits by revisional authority and therefore, the question on causing any prejudice to the petitioner by the impugned order does not arise and hence interference refused by this Court. Citing the observations of this Court, Mr.B.S.Patel submitted that if the order passed by the competent authority dated 25th October, 1982 is illegal, nullity and violative of respondent Nos.1 to 3, then delay of challenging that order by way of final appeal will not come into their

way. Therefore, he relied upon the decision of this Court in case of POPATLAL SUNDARJI CHANDAN & ORS V. STATE OF GUJARAT reported in GLR 1997[1] pg.563. However, he relied upon the observations made by this Court that the resolution of the Municipality allotting the land to the petitioners set aside by the Collector in exercise of powers under Section 258 of the Act, contention that the order was passed after 17 years from the date of resolution and delay vitiates the order. The said contention has been negatived by this Court and held that action cannot be said to be invariably fatal only on account of the delay. He also submitted that the order dated 19th January, 1985 rejecting the application submitted by the petitioner under Section 20 is in respect of the application which was made in the year 1984 but as such no decision has been produced before this Court in respect of the application submitted by the respondents in the year 1978 under Section 20 of the Act, 1976. He also submitted that the order passed by the tribunal on 30th January, 1999 and thereafter, the Urban Land [Ceiling and Regulation] Act, 1976 has been repealed with effect from 1st April, 1999 and therefore, benefits of Repeal Act made available to all the farmers in that case, as to why same benefit should not be made available to the present respondents. Therefore, in short, his submission is that the appellate tribunal in Appeal No.54 / 1998 has rightly passed the order and no interference is required because it is merely remand order and no final decision has been taken by the appellate authority and therefore, these two petitions filed by the Gujarat Housing Board and the State of Gujarat respectively require to be dismissed with costs.

##. However, lastly also Mr.Pushpadatt Vyas, learned advocate appearing on behalf of Mr.B.S.Patel for the respondents has made certain submissions and according to Mr.Vyas, the minor sons are not asking any independent unit but his real grievance is that they were not heard before passing of the orders by the competent authority on 25th October, 1982. It is also his submission that the application under Section 20 was pending when the decision was taken and both these sons are having share as coparceners of the Hindu Family. However, he also submitted that this Court may take lenient view aginst the respondent No.1 - Kalpeshkumar Naranbhai Patel for his act for making false statement. It is also his submission that the respondent NO.1 to 3 are not asking for possession of the land in question so far the actual construction has been completed by he Gujarat Housing Board but in view of above situation, they are now requesting for some compensation for the land in question

which has been illegally possessed by the Gujarat Housing Board and construction was completed upon the said land. In light of his submission, he submitted that the petition filed by the State Government may be dismissed only on the ground that the petition is preferred against the order passed by the appellate tribunal dated 30th January, 1999 and request was made to the State Government to exercise the powers against the said order under Section 34 of the Act, 1976 but since such request was rejected by the State Government while exercising the powers under Section 34 of the Act, therefore, the petition filed by the State Government requires to be rejected.

##. I have considered the submissions of the learned advocates appearing on behalf of the respective parties in these two petitions so also perused the original file produced before this Court. However, having regards to the record and submissions of the learned advocates for the parties concerned, certain facts remain undisputed between the parties and therefore, this Court consider it just and proper to record the same as under :

That requisite Form has been filled up by the respondent No.4 - Shri Naranbhai Hirabhai Patel under Section 6[1] of the Act, 1976 and as per the original record, at that relevant time, both these sons of Naranbhai Hirabhai Patel namely [i] Kalpeshkumar Naranbhai Patel and the [ii] Nileshkumar Nanranbhai Patel were minor. It has come on record that the date of birth of said Kalpeshkumar and Nileshkumar is recorded as 1st January, 1974 and 11th June, 1976 respectively. Thus, considering the date of birth of both these sons, which are now not disputed by the respondents contrary to record by Mr.B. S. Patel, learned advocate for the respondents. It has also come on record that the the competent authority has passed order on 25th October, 1982 declaring the excess vacant land admeasuring at 7424 sq.mtrs giving one unit to the father out of the land declared excess. The description of the excess vacant land as declared by the competent authority of village Danteshwar is as under :-

Survey No.327 : Land adms.1151 sq.mtrs
Survey No.329/1 : Land adms.4148 sq.mtrs
Survey No.329/1 : Land adms.2125 sq.mtrs

It is also on record that the said order of the competent authority has been challenged by the father by way of filing Appeal under Section 33 of the Act, 1976 being Appeal No.1052/1984 on 25th June, 1984 after period

of one and half years. During this period of filing the appeal, meanwhile, the competent authority has issued notification under Section 10[1] on 15th January, 1983. The notification under Section 10[3] has also been issued on 30th July, 1983 and thereafter notification under Section 10[5] has been issued on 14th / 17th February, 1984. However, the appeal filed by the father has been dismissed by the appellate tribunal on 31st July, 1986 at the stage of admission as being time barred and on the ground that the father having allowed further proceedings upto Section 11 to be conducted unchallenged. Thereafter, the possession of the land in question has been taken over by the State Government on 2nd January, 1990 and necessary Panchnama was prepared at the site. Proceedings under Section 11 has been issued on 29th May, 1984 and thereafter the State Government has handed over possession of the land in question to the Gujarat Housing Board on 26th December, 1996 while exercising the powers under Section 23 of the Act, 1976. Thereafter, two sons and wife of the respondent No.4 has filed Appeal under Section 33 on 14th November, 1998 and the said appeal being Appeal No.54/1998 has been allowed by the tribunal on 30th January, 1999.

##. In light of above undisputed facts which are on record between the parties, the order passed by the appellate tribunal in Appeal No.54 / 1998 dated 30th January, 1999 has been challenged by these separate petitions by Gujarat Housing Board and the State of Gujarat respectively. Therefore, the question before this Court is to examine the legality and validity of the order passed by the appellate tribunal on 30th January, 1999. Therefore, in above view of the matter, in view of this Court, at the first instance the provisions of Section 33 of the Act, 1976 is required to be taken into consideration and hence, the provisions of Section 33 of the Act, 1976 are reproduced as under :-

"33. Appeal - [1] Any person aggrieved by an order made by the competent authority under this Act, not being an order under Section 11 or any order under sub section [1] of Section 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed [hereinafter in this section referred to as the appellate authority]:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days it is satisfied that the

appellant was prevented by sufficient cause from filing the appeal in time.

[2] On receipt of an appeal under sub-section [1], the appellate authority shall, after giving the appellant an opportunity of begin heard, pass such orders thereon as it deems fit as expeditiously as possible.

[3] Every order passed by the appellate authority under this section shall be final."

A bare reading of Section 33 of the Act, 1976 makes it clear that any person aggrieved by the order made by the competent authority is entitled to file appeal within 30 days from the date on which the order is communicated to him provided that the appellate authority may entertain the appeal after expiry of said period of 30 days and if it is satisfied that the appellant was prevented by the sufficient cause from filing the appeal in time. Therefore, the appellate authority has no power to entertain the appeal after expiry of the said period of 30 days unless and until he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. In light of the provisions, the order passed by the appellate authority, this Court is failed to understand that in the order passed by the appellate authority, as such no reasons for satisfaction is given by the appellate authority explaining as to what reason the appellant was prevented by sufficient cause and therefore, it is observed that the appellate authority - tribunal has not given any sufficient reasons as was required under the statute itself. It is also necessary to note that the appeal has been filed by the respondent Nos.1 to 3 on 14th November, 1998 and on perusal of the copy of the appeal memo which is produced on record by the petitioner - Gujrat Housing Board at Annexure-K, where according to para-6, some averments were made by the appellant in respect of delay for not filing the appeal in time were tried to be explained to the effect that the order passed by the competent authority is void ab initio and therefore, the delay in filing the appeal not applicable because the order passed by the competent authority is void ab initio and therefore the appeal may be entertained and required to be decided on merits to do justice to the appellant. Barring this averment made in the entire appeal memo, no other averments were made by the appellant explaining the real cause which in fact prevented for not filing the appeal within period of 30 days. Therefore, it is observed that when there was no averments made in the

appeal memo, similarly, no statements made before the appellate authority to justify that the respondent Nos.1 to 3 were prevented by sufficient cause. But surprisingly, the only observations made by the appellate authority to the effect that whatever delay has been caused in filing the appeal against the order of the competent authority as the order of the competent authority is nullity and ab initio void and therefore, the request was made by the appellant to decide the appeal on merits. Considering the observations of the Appellate Authority for condoning the delay for filing the appeal by the appellant, in view of this Court, this was mere submission which was made as averments made in the appeal memo and except that no other submissions were made by the appellant before the appellant tribunal and more surprisingly, the appellate authority has accepted the averments of the appellant by reaching to the satisfaction and the appellate tribunal while justifying the cause, has merely mentioned that considering the submissions of appellant in the interest of justice, the appeal is admitted and required to examine the merits of the appeal. Except this, there is no any other observations in the entire order of the appellate authority. Considering above facts, in opinion of this Court, on the contrary, the appellate authority was supposed to give detailed finding and reasons in respect of satisfaction to the fact that the appellants were prevented by sufficient cause for not filing the appeal within 30 days. Therefore, considering this aspect, when the authority has not applied his mind respect of the provisions of Section 33 of the Act, 1976 and in opinion of this Court, as such no satisfaction has been justified or explained by the appellate authority while condoning the inordinate delay of 16 years in one word especially when the appellant is not justified for explaining the delay in filing the appeal after period of 16 years. Therefore, considering the specific provisions made under Section 33 of the Act, at the first instance, it was the duty of the appellate tribunal to satisfy as to whether the appellant was in fact prevented by the sufficient cause from filing the appeal in time. However, considering the order passed by the appellate tribunal, no sufficient cause has been pointed out by the appellant and no sufficient cause has been taken into consideration by the appellate authority and in absence of valid cause which in fact prevented the appellant for this much inordinate delay of 16 years, as such , no satisfaction or justification has been pointed out by the appellate authority on what ground and / or consideration the authority is satisfied to condone the delay of 16 years. Therefore, in light of this fact and after considering

the appeal memo and the order passed by the appellate authority, according to my opinion, the appellate authority has committed gross error in condoning the delay of 16 years without having any material on record and there being no sufficient cause mentioned by the appellant and without satisfying about prevented sufficient cause which has not been shown at all by the appellant, has admitted the appeal and decided the same on merits. It is also most pertinent to note here that detailed objections by way of parawise remarks have been filed by the competent authority, wherein a specific contention was raised by the competent authority that the appeal was time barred and upto Section 10[5] proceedings have been over. The competent authority had also raised objections that civil suit is pending and proper and reasonable opportunity was given and the appellant Nos.1 & 2 both were minors at the relevant time and excess land declared by the competent authority has been handed over to the Gujarat Housing Board and on the land in question, construction work is going on and similarly appeal filed by the father of the present appellants against the very same order dated 25th October, 1982 has been dismissed only only the ground of delay by order dated 31st July, 1986. Therefore, the request was made by the competent authority to reject the appeal filed by the appellant. Thus, in light of serous objections raised by the competent authority against the appeal, even though the appellate authority has not discussed any of the objections nor given any reason as to why the objections raised by the competent authority are not accepted. However, the appellate authority in gross ignorance of the objections of the competent authority, merely relied upon the submissions of the appellant and passed the order. It is also observed that the appellate authority could have passed the order, but simultaneously, the appellate authority ought to have considered the serious objections raised by the competent authority but it is surprising that none of the objection has been taken into account by the appellate authority and simply considering the submissions of the appellant, has decided the appeal by allowing the same in favour of the appellant and as consequence thereof, set aside the order of the competent authority dated 25th October, 1982. Therefore, bare perusal of order passed by the appellate authority clearly suggests that the appellate authority has passed unreasoned order and therefore, it can be said the it was total non application of mind by the appellate authority. Therefore, it is abundantly clear that basic error has been committed by the appellate authority by not considering any of the objection raised by the competent authority. Therefore, on this count only, the order

passed by the appellate authority requires interference by this Court and the same is required to be quashed and set aside accordingly.

##. Now dealing with the contention raised by the petitioner that the order passed by the competent authority dated 25th October, 1982 has been challenged by the father as well as sons and wife separately and therefore, principles of res judicata would apply. In light of this contention , definition of `family' given under Section 2[f] of the Act, 1976 is very important and considering the definition of the family, in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children, whereas explanation to this definition as given under the Act itself provides that for the purpose of this clause, `minor' means a person who has not completed his or her age of eighteen years. Even if the definition of word `person' given under Section 2[i] is considered, it suggests that `person' includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not; Thus, if these two definitions given under the Act, 1976 is taken into consideration read with provisions of Section 33 of the Act, 1976, it is abundantly clear that an appeal can be filed by any person aggrieved by the order made by the competent authority under the provisions of the Act. Therefore, a person is entitled to file appeal is, may be, individual, a family, a firm or a company or an association or a body of individuals whether incorporated or not; Considering the definition of the word `family', includes two minors sons and wife. Therefore, once the order had already challenged by the father by way of appeal as being aggrieved person under Section 33 of the Act, 1976 and if the said appeal was dismissed on 31st July, 1986, in that case, these two minor sons and wife are also included in the definition of family as also under the definition of `person' and while reading these definitions with the provisions of Section 33 of the Act, according to my opinion, two sons and wife were not at all entitled to challenge the order of competent authority dated 25th October, 1982 which was already challenged by the father of two minors sons and husband of the respondent No.3. Therefore, once the appeal filed by the father is dismissed, second challenge to the very same order by two minor sons and wife of the respondent No.4, can be said to have challenged again by the very same person or family as per the provisions of the Act. Therefore, once the appellate authority had decided the appeal on 31st July, 1986, again by way of same party and / or person or

family, the appellate authority was not at all entitled to examine the merits at the instance of two minors and wife inasmuch as these two minor sons and the wife of the respondent No.4 - Naranbhai Hirabhai Patel can be considered as one person or a family and therefore, by way of same party, second decision in respect of the very subject matter are barred by the principles of res judicata. It also requires to be noted that the challenge by the father to the order of the competent authority dated 25th October, 1982 is again challenged by the family or a person which includes these two minor sons and wife. Therefore also, on this count the order passed by the appellate tribunal dated 30th January, 1999 is required to be interfered with by this Court.

##. This Court also considers it pertinent to note that when the Form has been filled up by the father under Section 6[1] of the Act, 1976, on such occasion, no application was submitted by the father under Section 20 of the Act, 1976. To discuss this aspect of the matter, the Form which has been filled up by the father needs to be discussed. In Form, Item No.9 wherein a specific column has been made to give reply to the effect "As to whether in respect of the land, any application has been submitted by the declarant under Section 19 or 20 or whether it is likely to be filed such application". However, the answer given against this column by the father is "No". Similarly, in Form also specifically requires to fill up `Purvani - Schedule-J'. However, pg.41, wherein it was required to be answered that whether in respect of the land, any application has been submitted by the declarant under Section 20 or not ? But the answer is given as `No', meaning thereby, no detail has been given by the declarant. While taking into consideration the village Form 7 / 12 in respect of the Survey No.327, 329/1 and 329/2, wherein all the village Form show that cultivation on the land in question is recorded as raising grass. Therefore, considering the definition of word `agriculture' provided under Section 2[o][2][a], wherein it is defined that agricultural includes horticulture but does not include raising of grass. Therefore, looking to the Village Form No.7/12 in respect of the land in question, which is admittedly recorded being land raising grass and therefore, land in question was obviously not agricultural land. This aspect was taken into consideration by the competent authority while considering the contention raised by the father respondent in this petition. Moreover, the respondents have not produced any documentary evidence as exemption application under Section 20 of the Act in respect of the land in question. Mr.B.S.Patel, learned

advocate has submitted that the respondents had filed application in the year 1978 but as such, no copy of the application has been placed on record by the respondents. Therefore, considering the reply given by the authority upon the application dated 20th August, 1984 filed under Section 20, whereby the same was rejected by the State Government by order dated 19th January, 1985. Therefore, subsequent to the order passed by the competent authority, such application in respect of the land in question belong to Survey No.327, 329/1 and 329/2 of village Danteshwar under Section 20 had already rejected. Therefore, the exemption application dated 20th August, 1984 was rejected by the respondents on 19th January, 1985 and thus, it is clear that the competent authority has passed the order prior to application. It is clear that order passed by the Competent Authority on 25th October, 1982 and application under Section 20 was submitted on 20th August, 1984 and the same was rejected on 19th January, 1985. Therefore, it is abundantly clear that when the competent authority has passed the order, no such application under Section 20 was pending. However, this contention was raised by the father in his appeal before the appellate tribunal, in para-5 & 6 of the order of the appellate authority, the appellate authority has observed that once the competent authority has observed that Survey No.715 held by the appellant father had been granted exemption under Section 20 for agricultural. However, regarding Survey No.327 and 329 the competent authority has observed that the revenue record shows that the land was used for growing grass which was not put to agricultural use as per the provisions of Section 2[o][ii][a] of the Act and therefore, there is no need to postpone the decision under Section 8[4] awaiting outcome of the appellant's application for agricultural exemption for the land in question. However, it is pertinent to note that the order passed by the appellate authority in respect of the appellant father dated 31st July, 1986, the appellant father has not challenged further before this Court the order of the appellate authority and hence, the order passed by the appellate authority in respect of the land in question or so far the subject mater is concerned, attained finality. In light of above facts, in view of this Court, once in reality the land in question is not agricultural land as per the findings of fact given by the competent authority, confirmed by the appellate authority and said order since not challenged by the appellant father to the higher forum, such decision is binding to the present respondent Nos.1 to 3 and resultantly, this question was rightly not required to be reexamined again by the appellant authority in respect of

the appeal filed by the respondent Nos.1 to 3.

##. Now taking into consideration the contention that the land in question was self acquired property. It is observed that this fact has been admitted by the father while filling up the Form, which is at pg.33 internal pg.4 of the prescribed form, wherein a specific col.9 required to clarify as to how the land has been acquired by the person. However, the reply given by the father is that the land in question has been acquired by way of tenancy rights under the provisions of the Tenancy Act. In view of above finding of fact and record of the case, it becomes clear that the land in question was not ancestral property but on the contrary, the same was acquired as self acquired property and this fact is clear even according to the admission made by the father while filling up the prescribed Form under the Act. Similarly, on pg.35, there are several divisions which required to fill up some details and according to first division which required to specify by the declarant that `as to whether the land in possession by the person is as owner or not ?'. Against said column, the father who was the declarant has declared in division [1] that he is the owner of the land admeasuring 7.80 acres guntha, whereas against the second division, wherein, it is stated that the land 3-15 Acre is under possession as tenant. Therefore, considering all these aspects of the Form itself, it is abundantly established that the land in question was not the ancestral property but admittedly, it was self acquired property which was purchased by way of tenancy rights from the original landlords by the father. Therefore, two minors sons are not entitled to any legal right upon the land which so far was acquired by the father. However, at this stage, the view taken by this Court in very identical facts and circumstances of the case in case of HARGOVINDBHAI PRABHUBHAI PATEL AND ANOTHER V. STATE OF GUJARAT reported in 1993 [2] GLR pg.1100 is important to the facts of the present case and therefore, the relevant observations made by this Court in above referred decision are reproduced as under :-

> "5. In order to appreciate the rival contentions of the parties, it is necessary to make reference to some of the provision of the Act. The Urban Land [Ceiling and Regulation] Act, 1976 came to be passed by the Parliament for the imposition of ceiling on vacant land in Urban agglomerations, for the acquisition of such land in excess of ceiling limit, to regulate the constructions of buildings on such lands and for matters connected thereto. The Act received

assent of the President of India on 17-2-1976. Section 2 of the said Act enacts definition clause. Section 2[f] defines `family' to mean "in relation to a person, the individual, the wife or husband, as the case maybe, of such individual and their unmarried minor children". The word "person" is defined under Section 2[i] to include an individual, family, a firm, a company or an association or body of individuals whether incorporated or not. Section 2[g] defines the "vacant land", to mean land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include -

[i] land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated, [ii] in an area where there are building regulations, the land occupied by any building which has been constructed before, the appointed day with the approval of the appropriate authority and the land appurtenant to such building, and [iii] in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building. Section 3 of the Act, inter alia, provides that no person shall be entitled to hold any vacant land in excess of ceiling limit in the territories to which the Act applies except the otherwise provided in the Act. Ceiling limit is prescribed by Sec. 4 of the Act. Section 4[7] of the Act being relevant for the purpose of this petition is reproduced hereunder:-

"4[7] Where a person is a member of Hindu Undivided Family, so much of the vacant land and of any other land on which there is building with a dwelling unit therein, as would have falled to his share had the entire vacant land and such other land held by the Hindu Undivided Family been partitioned amongst its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such person."

From the aforesaid provisions of the statute, it becomes clear that on coming into force the said Act, no person is entitled to hold any vacant

land in excess of ceiling limit. The word `person' is defined to include an individual, a family, a firm, a company etc. Therefore, if the land is held by a family it can be said to be holding of a person. The word `family' is defined to mean to relation to a person, individual, a wife or husband, as the case may be, of such individual and their unmarried minor children. The liability, therefore, to file statements under Section 6[1] of the said Act arises where the land held by a person or family is beyond the ceiling limit. Section 4[7] makes the position very clear by providing that when a person is a member of Hindu Undivided Family so much of the vacant land and of any other land on which there is building with a dwelling therein as would have fallen to the share of the person, had the entire vacant land and such other lands held by Hindu Undivided Family been partitioned amongst the members of the family at the commencement of the said Act, shall also be taken into account in calculating the extent of vacant land held by such person. Therefore, when the land belongs to a Hindu Undivided Family and where a member of Hindu Undivided Family files statement under Sec.6[1] of the said Act because his holding was above the permissible ceiling limits on the date of commencement of the said Act, the legislature intended that there shall be a deemed or notional partition. A Hindu Undivided Family is a body of individuals which is not incorporated. Such body of individuals however differs from other association of individuals inasmuch in the case of association of individuals the interest of the members are defined and determinable. Therefore, by Sec.4[7] of the Act the legislature provided that on the date of commencement of the Act a notional partition of Hindu Undivided Family amongst its members shall be presumed to have taken place in respect of vacant land or land on which there is building with a unit therein. On the basis of such notional partition share of a member will be determined in such land and it shall be taken into account in calculating the extent of vacant land held by a member. The partition contemplated by sub section [7] of Sec.4 is notional or imaginary. Joint Hindu Family continues as such even in respect of such land and the members continue to hold vacant land or land on which there is building with dwelling

unit therein. Therefore, despite the fact that there is no actual partition by metes and bounds the sub section is to be applied in that manner. Share of each coparcener is to be ascertained. In the present case in the branch of Hargovindbhai [petitioner No.1] there were three cosharers and therefore each one was entitled to hold 1/3rd share. Similarly, in the branch of Chimanbhai [petitioner No.2] there were four sharers and each one was entitled to 1/4th share from the total holding. Minor son Dinesh in the branch of Hargovindbhai was entitled to 1/3rd share and minor son Hashmukhbhai in the branch of Chimanbhai was entitled to his share. However, in view of the definition of the word `family' as given under Section 2[f] it would include the individual, wife or husband, as the case may be and such individual and their unmarried minor children. Therefore, the share which was earmarked for minor son shall have to be clubbed together with the share of the father and will not be entitled to hold separate share. Accordingly, the holding of Govindbhai is to be divided into three equal shares and 1/4th property of Chimanbhai and 1/3rd property of Hargovindbhai is required to be clubbed together with the holding of Hargovindbhai and Chimanbhai. After such clubbing it is to be determined as to whether they were holding excess vacant land or not. From the combined reading of Section 3 with Section 4[7] definition of the word `family' as defined by Section 2[f] and the word `person' as defined by Section 2[i] of the Act it becomes clear that on the date of coming into force of the Act there takes place a notional statutory partition of the shares which the coparceners are entitled to hold. However, in view of the definition of Section 2[f] read with Section 2[i] the share of minor shall have to be clubbed with the share of the father / mother as the case may be and thereafter the excess vacant land is to be determined. The competent authority unfortunately did not take into account the share of minor sons in the branch of petitioner No.1 as well as petitioner No.2 with the result that in the case of Hargovindbhai property was divided into two units and in the case of Chimanbhai Property was decided into three units only and it was held that they were not holding excess vacant land. This earlier mistake was noticed by the State Government in exercise of its revisional

powers under Section 34 and it has rightly found in its order that total holding of Hargovindbhai was to be divided into three shares and total holding of Hargovindhbia was to be divided into three shares and the total holding of Chimanbhai was required to be divided into four shares and accordingly Hargovindbhai [petitioner No.1] was holding 551 sq.mtrs of excess vacant land while Chimanbhai was holding 58 sq.mtrs of land as excess vacant land. In my opinion, the findings reached by the State Government in exercise of its revisional power under Section 34 of the said Act are absolutely consistent with the aforesaid provisions of the Act and there is no justification for this Court to interfere with such findings in its jurisdiction under Art.227 of the Constitution of India. No jurisdictional error is pointed out nor is any error of law apparent on the face of record is pointed out. Therefore, no case is made out for the interference of this Court with order passed by the State Government."

In light of above observations made by this Court considering the similar facts and situation, according to my opinion, the definition of words `family' and `person', these two minor sons are not entitled to any independent unit or any hearing before passing the order by the competent authority on 25th October, 1982. Therefore, the view taken by the appellate authority while deciding the appeal No.54 / 1998 by order dated 30th January, 1999 coming to the conclusion that the appellants were not given any opportunity of hearing before passing the order by the competent authority dated 25th October, 1982, is erroneous and contrary to the settled law as laid down by this Court. Therefore, in view of the observations of this Court and on the ground discussed above, the order passed by the appellate authority dated 30th January, 1999 is required to be quashed and set aside.

##. So far as the contention of the delay in filing the appeal by the respondent Nos.1 to 3, learned advocate Mr.S.B.Pandit relied upon the observations made by this Court in case of PARSHOTTAM RAMAJI RATHOD V. DHIRAJLAL DHARAMSHI MISTRY reported in 1993 [3] GLR pg.2079, following observations made in para-6 to 7 are quoted as under :-

"6. Reverting back to the facts of the case,

there cannot be any controversy that the appeal filed by the petitioner before the Collector was in exercise of a statutory right of appeal. It is a well settled principle that the right of appeal is a statutory right and is subject to all the restrictions imposed by the statute which confers that right. It is not an absolute right or an abstract right. The right of appeal is not merely a statutory right, but it is also a right to resort to a statutory procedure i.e., it is a procedural right and that therefore the same must comply with and must fall within the parameters laid down by the statute which governs the exercise of that right. If the statute conferring that right also imposes a period of limitation for the exercise of such a right, the appeal must be filed within the prescribed period. It goes without saying that if such right is sought to be exercised beyond the period of limitation, it must be held that the right has been extinguished by lapse of limitation.

7. Learned Counsel for the petitioner seeks to overcome this hurdle by contending that where the subject-matter of challenge in the appeal viz. the entries in question are themselves void ab initio, the very concept of limitation cannot apply. This submission is fallacious for the simple reason that if the relevant entries in question were, in the opinion of the petitioners, null and void ab initio, it was open to the petitioners to ignore their existence, since according to the petitioners, they had no effect in law. It was also open to the petitioners, if their so called rights were challenged in any proceedings before in any forum, to contend their rights cannot be challenged on the basis of any entry which is in itself null and void ab initio. However, the petitioners have not adopted this course. What the petitioners have chosen to do is to approach the appropriate forum specifically for a declaration that the entries are null and void. The petitioners, therefore, have approached the forum for a specific declaration, sought on various grounds including the ground that such entries are null and void. However, it cannot be overlooked that the petitioners are seeking to exercise a statutory right of appeal for the purpose of obtaining such a declaration. Obviously, such a declaration could not possibly be obtained by the petitioners except by

exercising such statutory right. Once the statutory right is sought to be exercised, as explained hereinabove, such right must be exercised within the period of limitation. It cannot, then, be contended that although the right is sought to be exercised beyond the period of limitation, the concept of limitation becomes irrelevant merely because one of the grounds, of challenge to the entries is that they are null and void.

7.1 What also cannot be overlooked is that in order to conclude that the entries are null and void or otherwise, the prescribed forum is required to apply its mind to the contentions raised, on the facts and circumstances of the case, and to record a finding thereon. obviously, such application of mind and the recording of a finding thereafter cannot be achieved by the prescribed forum except by way of prescribed appeal. Thus, without there being a proper appeal i.e. unless the right of appeal is exercised within the period of limitation, the prescribed forum cannot possibly examine the matter on merits and/or to record the finding as prayed for by the petitioners. It also goes without saying that a serious of decisions have laid down the principle that the expiration of the prescribed period of limitation extinguishes the procedural right to move the appropriate forum for the reliefs sought, and that the expiration of the period of limitation raises a jurisdictional barrier against that forum examining the case on merits. Thus, if the prescribed forum because of the lapse of limitation has no jurisdiction to examine the petitioner's contention on merits, it could not possibly first come to the conclusion that the entries were null and void and then hold that because the entries are null and void, the concept of limitation has no application at all."

##. The question of delay has also been considered by the Full Bench of this Court in case of JADAV PRABHATBHAI JETHABHAI V. PARMAR KARSHANBHAI DHULABHAI reported 2001 [1] GLR pg.16. While considering the said decision in case of While considering the said decision in case of Saburbhai Hemabhai Chauhan (supra), it would be appropriate to consider first the decision of the Full Bench of this Court in case of Jadav prabhatbhai

Jethabhai v. Parmar Karsanbhai Dhulabhai reported in 2001(1) wherein the Full bench of this Court has held that the suit for declaration that the order is nullity has to be filed within the period of limitation. In para 22, 23 and 24 of the decision, it has been observed by the Full Bench of this Court as under:

"22. We are of the clear opinion that when the binding decision or authority of the High Court stands even impliedly overruled, either by a decision of Larger Bench or Hon'ble apex Court no reference is necessary to a larger Bench as it is done, in the present case. The proposition of law has been extensively explored and very well expounded and settled in the field of Precedential Jurisprudence. but for the aforesaid special reasons and special circumstances coupled with the fact that the author of the reference has retired long before, we would have not thought it necessary or expedient to deal with and decide to whole appeal on merits making a departure from the usual and regular practice.

23. It becomes, therefore, very clear that the decision of the supreme court in Gurdev Singh (supra) in which Syed Qamarali's case has been considered and distinguished, is, squarely, attracted to the facts of the present case and the merits of the appeal could be decided on that basis itself. In para 10 of the decision in Gurdev Singh (supra) Qamarali's case (supra) has been specifically referred to and distinguished by giving facts and law elaborately. It has also been clearly observed that the right to sue accrued to Syed Qamarali was brought within the period of limitation. Qamarali's case stands on the different footing and is not relevant.

24. In the present appeal, the issue of limitation is decided against the appellants. It has been clearly found by the trial court that the suit was not brought within the period of limitation. It has been clearly pronounced in para 8 in Gurdev Singh's case that in view of the legal principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the period of limitation. If the statutory time limit expired,

the Court cannot give a declaration sought for.

25. The observations in para 6 and 7 are also very relevant and material.

'6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In Smith v. East Elloe Rural District Council, 1956 AC 736-769, Lord Radcliffe observed:

'an order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'

7. Appropos to this principle, Prof. Wade states : "the principle must be equally true even where the brand of invalidity is plainly visible, for their also the order can effectively be resisted in law only by obtaining the decision of the Court" (See Administration Law, 6th Ed. 350 Prof. Wade sums up these principles;

'the truth of the matter is that the Court will invalidate an order only if the right ready is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the 'void' order remain effective and is in reality, valid. It follows that an oroder may be void for one purpose and valid for another, and that it may be void against one person but valid against an other."

Considering the observations made by the Full Bench of this Court in the decision referred above, fact remains that appeal was filed by the appellant after period of 16 years. However, considering the specific provisions of Section 33 of the Act, 1976, an appeal, by an aggrieved person by the order of the competent authority, has to be filed within 30 days and beyond the statutory period prescribed under the Section, admittedly the appellate authority has not justified its satisfaction while condoning the delay inasmuch as no material or averments were placed on record by the appellant showing that the appellant was prevented by the sufficient cause for not filing the appeal in time. In light of these facts, the order of appellate order dated 30th January, 1999, requires to be quashed and set aside.

##. This Court also take this opportunity to note one more important aspect that during the interim period of 16 years, the State Government has handed over the possession of the land in question to the petitioner Gujarat Housing Board on 26th December, 1996 and thereafter, construction has been carried out and completed for 121 tenements. However, the construction work is still going on and more than Rs.20 lakhs has been spent by the Gujarat Housing Board upon the land in question for construction purpose. Not only this, third party interest in respect of family members of 141 tenements have been created and the tenements are meant for the benefits of the poor and weaker sections of the society by the Gujarat Housing Board. Therefore, considering all these aspects of the matter, the view taken by this Court in a decision in case of BAI DHANI WD/O HIRA MOTI VS. STATE OR GUJARAT reported in 1996 [3] GCD pg.15, of which, the relevant observations made by this Court in para-15 to 17 are quoted as under :-

> "15. Since this Court has found that the issuance of show cause notice could not be said to be without jurisdiction, ordinarily, the party should be relegated to the stage from which the challenge came by way of this petition. However, in view of the peculiar facts and circumstances emerging from the record of the present case, this Court is inclined to entertain the petition even against the show cause notice though it is not without jurisdiction. The impugned order of the Competent Authority was recorded on 25-3-1991 and the show cause notice for the contemplated proceedings of revision under Section 34 came to

be issued on 13-2-1995. Thus, there is delay in taking the matter in suo motu revision for more than four years. Prima facie, this is a long delay in taking the matter in suo motu revision. It is true that in a given case, the State Government may justify the invocation of revisional powers wherein delay is involved if there is a justifiable factual situation. In other words, if the facts and circumstances demand, revisional power may be exercised. However, in the present case, the factual situation is different. Not only that there is delay of more than four years, but during the intervening period of more than four years, the petitioners have spent huge amount and have made investment in raising the dwelling units. Therefore, on the ground of delay and equity created in favour of the petitioners, it is rightly submitted that the show cause notice should be quashed.

16. The following facts which are relevant and material have remained uncontroverted :

[a] The petitioners entered into an agreement to sell the land to the society;

[b] The society was registered on the basis of possession of the land from the petitioners.

[c] The society entered into an agreement to develop the land in question and for that purpose entered into an agreement with the builder.

[d] Enormous amount of money has been spent by the society in developing the land and thereafter 79 tenements have been constructed on the said land.

[e] Some of the members have already started residing in the tenements which have been constructed on the land in question;

[f] Good amount of money has been spent in obtaining electric connection, telephone connections and towards miscellaneous expenses.

[g] Internal roads of the society and approach road linking the highway are constructed.

[h] Compound wall is constructed on all the four sides of the society spending large sum of money;

[i] all other activities required for the purpose of making the surrounding habitable have already been undertaken.

17. The contention is raised by the learned Assistant Government Pleader that as the appeal was filed, the delay has occasioned in taking the matter in suo motu revision. This submission may, prima facie, appear to be captivating, but not convincing. Firstly, the appeal was not filed by anyone of the parties to the proceedings before the Competent Authority. Secondly, the appeal came to be filed 30 months after the Competent Authority decided the matter on 25-3-1991. The appeal was filed on 14-9-1993. There is nothing on record to account for satisfactorily the period of 30 months. Not only that, the appeal came to be decided on 14-10-93. Thereafter also, no action was initiated under Section 34 for a spell of 16 months. In cases where the order of the Competent Authority is in favour of the holder of the land and the same is operating for a period of about 15 months or more, the holder of the land would be justified in assuming that the order of the competent authority holds the field and he would also be justified in dealing with the lands on the supposition that the order of the Competent Authority has become final. In the present case, the land holder has transferred the land to a Housing Society. In turn the society has also entered into an agreement to develop the land in question and for that entered into an agreement with the builder. The society has spent huge amount towards the investment in constructing the tenements. 79 tenements have been constructed on the said land during the intervening period. Some of the members of the society have also started residing in the said tenements which have been constructed on the land in question. Compound wall are also constructed on all the sides. The internal roads of the society linking the highway are also constructed. In view of the aforesaid factual scenario, the exercise of revisional powers under Section 34 of the ULC Act would be improper and unjust. Serious prejudice is cause on account of the belated exercise of powers. Therefore, the impugned action of issuing show cause notice for purported exercise of power under Section 34 of the ULC Act is

unreasonable. In this connection, reference may be made to the decision of this Court in the case of Jayantilal K. Shah vs. State of Gujarat and Anr. 1994 [2] GCD 83. The ratio of the said decision fully support the view of this Court. The said decision is also followed by this Court in Mansukhlal G. Kaneria vs. State of Gujarat, 1995 [1] GLH 264."

Thus, considering the observations made by this Court in above referred cases dealing with identical facts and circumstances and considering the facts of the present case, equity is already created in favour of the present petitioner and therefore also, the order passed by the appellate authority dated 30th January, 1999 is required to be interfered with by this Court.

##. Recently, while dealing with the identical situation and the question arisen under the Act, 1977, this Court [Coram : Miss Justice R. M. Doshit, J.] in Special Civil Application No.5269 / 1999 passed the order dated 12th July, 2001. The relevant observations made by this Court are quoted as under :-

"As recorded hereinabove, the order by the competent authority was made as far back as on 7th December, 1984, the same was not carried in appeal until 1992 and was challenged in appeal no.2 of 1992 which too was dismissed on 30th September, 1993. In view of the dismissal of the earlier appeal, the tribunal would not have entertained another appeal against the very order of 7th December, 1984. Any such appeal would be barred by the principles of res judicata. By entertaining the appeal against the very order of 7th December, 1984, the tribunal had usurped the power not vested in it and had thus committed a grave illegality. Besides, the fact of taking over of the possession by the State Government as far back as in the year 1991 and the allotment of the land under section 23 of the Act, though were brought to the knowledge of the Tribunal, have not been considered at all. Further, the tribunal has not made express order condoning the delay of more than 13 years nor the tribunal has given reasons why such delay was required to be condoned. Even if it is presumed that the tribunal had impliedly condoned the delay on the basis of the averment made by the petitioner, the

same is not sustainable. The only reason given by the appellant was that the land was being administered by the father of the appellant and the appellant was not aware of the order made by the competent authority.The appeal had been preferred soon after the inquiry was made in office of the concerned authority and the copies of the revenue records were obtained. The contentions were ex facie false and unsustainable. Even the tribunal has recorded that the father of the petitioner had died on 16th May, 1968 i.e. long before the commencement of the Act. In fact, it was the appellant who had made the declarations under section 6 of the Act and had also preferred the above referred appeal no.2 of 1992 before the Urban Land Tribunal. Further, the appellant also appears to have suppressed the fact of the appeal no.2 of 1992 preferred by him earlier and its dismissal on 30th September, 1993 from the Tribunal. The appellant was thus guilty of gross act of suppression of material fact. In no circumstances, the tribunal could have condoned the delay or entertained the appeal. I am of the opinion that in the present case, the order of the competent authority made on 7th December, 1984 had become final since the same was not challenged further. Challenge to the same was made in the year 1992 i.e. after the 'excess vacant land' had vested in the State Government and the possession too was taken over. Even the said appeal had been dismissed on 30th September, 1993. The matter had rested there. The order in respect of the excess vacant land had thus become final. The order having reached the finality, could not have been challenged afresh. The order of the competent authority could not have been set aside on the basis of the law pronounced by the Hon'ble Supreme Court years thereafter.

The petitioners cannot be heard at this belated stage to say that the Mamlatdar had no authority to take over the possession and that the possession alleged to have been taken over on 9th October, 1991 was a mere paper possession, that too after his appeal preferred in the year 1992 was dismissed in the year 1993. The assertion that the petitioner has continued to be in possession of the 'excess vacant land' till 1996-97 also cannot be countenanced. As recorded hereinabove, the possession of the land was taken

over in the year 1991 in the presence of panch. The panchanama has been produced on the record of the matter and has been signed by two panchas. Since then, in the year 1998, the excess vacant land has been allotted to some private persons and the Municipal Corporation for construction of the houses for the weaker section of the society. Thus, the third parties have acquired right over the said excess vacant land. Even if the petitioner has continued in the possession of the said 'excess vacant land', after the possession was taken over by the State Government in the year 1991, such possession is unlawful. The petitioner cannot take advantage of his unlawful act and claim the benefit of restoration of land under the Repeal Act. Having verified the record, Ms. Punani has submitted that pursuant to the vesting of the land in the State Government, necessary revenue entry no. 2657 had been made in the revenue records on 20th January, 1992. Thus, the proceedings in respect of the said vacant land under the Act was complete before the date of appeal and in no circumstances the said appeal could have been entertained by the tribunal. The allotment of the said vacant land under section 23 of the Act has also been entered in the revenue record on 13th March, 1996 under mutation entry no. 3119."

##. However, at this juncture, this Court also takes into consideration the recent observations made by this Court while dealing with identical facts and circumstances as of the present case and therefore, relevant observations made in para-9 of this Court in case of KHODABHAI CHAKUBHAI PATEL VS. STATE OF GUJARAT reported in 2001 [3] GLH 52, are quoted as under :-

"9. It may also mentioned that fresh draft statement under Section 8[3] was not required to be issued because there was no other person claiming interest in the property. The tribunal in its impugned order [Annexure-A] has observed that Survey No.56/2 was purchased by Chhakubhai in his own capacity and it was his personal property. There was no evidence to show that the land was HUF or ancestral property. This finding hardly requires interference. In the affidavit of the Competent Authority filed in this petition also it is clearly stated that Survey No.56/2 was purchased by Chhakubhai in his own capacity and

it was his self acquired property. Consequently, his son and daughter cannot be heard to say that it was joint family property in which they have share. It this is so then fresh draft statement under Section 8[3] was not required to be issued by the Competent Authority after the remand order."

##. Considering the above referred decisions and observations made by this Court and looking the facts of the present case on hands, it is clear that the requisite Form was filled up by the father in respect to the land in question which was admittedly self acquired property and not ancestral property. Not only this but this fact clearly admitted by the father in the prescribed Form. However, there was no evidence produced by the respondent either before this Court or even before the appellate authority to the effect that the property in question was ancestral property. On the contrary, there is sufficient evidence on record before the competent authority in view of the affidavit filed by the father dated 7th September, 1982 as also the Form filled up by the father which clearly shows that the land in question is self acquired property by way of purchase of the land as tenant from the landlord. Therefore, naturally at subsequent stage that too after a inordinate lapse of 16 years, two minor sons and wife are not having legal right to have hearing before passing the order by the competent authority on 25th October, 1982. Not only that two minor sons and wife do not have any legal entity under the provisions of Urban Land [Ceiling and Regulation] Act, 1976 which requires any hearing to the minor sons and wife of Naranbhai Hirabhai Patel. Therefore, considering the provisions of the Urban Land [Ceiling and Regulation], 1976, once two minor sons and wife are not having any legal right in respect of the land in question, they do not have any locus standi to challenge the order of the competent authority dated 25th October, 1982 again after period of 16 years and therefore, the order passed by the appellate authority dated 30th January, 1999, in my opinion, requires to be quashed and set aside.

##. In view of above discussion and considering the factual aspects of the matter and the finding given by this Court, this Court is of the opinion that the order passed by the appellate authority requires to be quashed. However, the contentions raised by the learned Advocate Mr.B.S.Patel on behalf of the respondents though not much appealable and convincing to the findings arrived at by this Court on the basis of examination of the factual

aspect, but in the interest of justice, the contentions on behalf of the respondents raised by learned advocate Mr.B.S.Patel are discussed as under;

##. The contention which has been raised by learned advocate Mr.B.S.Patel as to right of the minor as coparceners of the Hindu Joint Family and some authorities relied upon by the learned advocate Mr.B.S.Patel relying on the observations of the Apex Court in a decision reported in AIR 1979 SC 1436 and the decision reported in AIR 1976 pg.1 as also the observations made in a decision reported in AIR 1958 1042 are considered by this Court. Having regards to the proposition and ratio laid down by the Apex Court, this Court is in full agreement with the view taken by the Hon'ble Apex Court but considering the facts and circumstances of the case on hands, the authorities relied upon by Mr.B.S.Patel, learned advocate for the respondents, the same are not of any assistance to the case of the respondents. However, it is observed that Mr.Patel has relying on the observations of the Apex Court submitted that while making partition, right of the minor is equal to major but such partition cannot be challenged if it is bonafide, but it it is malafide, then the same can be challenged by the minor coparceners. But so far as the facts of the present case on hands, when two minor sons are not at all entitled to any share in view of the clear provisions of the Act, 1976 and therefore the view taken by this Court in a decision reported in 1993 [2] GLR 1100, two minor sons are not entitled to any right and therefore, the contention raised by learned advocate Mr.B.S.Patel requires to be rejected.

##. Before parting with the judgment, considering the submissions of the learned advocates for the petitioners in these petitions, this Court is of the opinion that the aspect of making of false statement by the respondent No.1 requires to be viewed seriously. At the cost of repetition, it is observed that the respondent No.1 Kamleshkumar Naranbhai has made a false statement on oath before this Court. However, Mr.B.S.Patel, learned advocate representing the respondents requested this Court not to view this aspect seriously but considering the misdeed and act of the respondent No.1, this Court is of the considered opinion that some action must be initiated against the respondent No.1. However, this Court has personally looked the entire original record of the State Government and it is found that the two minor sons have made false statement first before the appellate authority in appeal Memo of Appeal No.54 / 1998 to the

effect that they were major at the relevant time when the order was passed by the competent authority on 25th October, 1982. Consequently, the appellate authority while dealing with the appeal bonafide taken into consideration the false statement made before the appellate authority and considering the genuineness of the said statement and without calling for any documentary evidence and / or from the appellant, has believed this false statement as true one and ultimately came to the conclusion that if they were major at the relevant time, in that case, they were required to be heard by the competent authority before passing the order. This has resulted into miscarriage of justice and ultimately on account of this false statement, the appeal was allowed. Therefore, it is clearly established that the respondent No.1 - Kalpeshkumar Naranbhai Patel has not only made a false statement but obtained order in their favour from the appellate authority. Even on another occasion, while in reply against the petition filed by Gujarat Housing Board, the respondent No.1 has made specific averments made on oath that at the relevant time, two sons of the respondent No.4 were major and very false statement has been reiterated in the affidavit filed against the petition by the State Government. Therefore, according to my opinion, while knowing fully well that both were minors and the further fact that in the year 1982, both were studying in Standard - II & III respectively but despite this, a false statement has been made with a view to misrepresent and mislead the Court with ulterior motive to obtain orders in their favour. Such attitude, misdeed and tactics adopted by respondent No.1 Kalpeshkumar Naranbhai Patel to gain illegal gain, according to my opinion, requires to be viewed seriously by this Court.

##. This Court has also considered the xerox certificates which were available in the original file and looking to the school certificate, the date of birth of Kalpeshkumar is 1st January, 1974 and the date of birth of Nileshkumar Naranbhai Patel is recorded as 11th June, 1976. Not only this but as per the affidavit which has been filed by the father on 7th Sept., 1982 before the competent authority, both were considered as minor sons. However, Mr.B.S.Patel, learned advocate for the respondents on being shown the original file of the State Government by Mr.R.M.Chauhan, learned AGP, has fairly admitted and agreed that admittedly both these respondents were minor but despite of this fact in knowledge, clearly false statement on oath before the appellate authority and even before this Court. However, this Court has also given an opportunity to learned

advocate Mr.B.S.Patel to produce any reliable documentary evidence in respect of the date of birth of these two respondents, contrary to the documentary evidence available on the record, before this Court but on next adjourned date, Mr.B.S.Patel, fairly submitted that he is unable to produce any documentary contrary to the date of birth which is recorded in the first order passed by the competent authority on 25th October, 1982. Therefore, in light of these documentary evidence, it is abundantly clear that the statement made by the respondent No.1 first before the appellate authority in Appeal No.54 / 1998 and again in the affidavit filed before this Court, against the petition filed by the Gujarat Housing Board as also the State of Gujarat, is admittedly false and thus, in all, before three judicious authority Mr.Kalpeshkumar Naranbhai Patel has made a false statement with malafide intention and despite of the full knowledge that the statement made is incorrect just with a view to get result of the proceedings in their favour just to mislead the Court of law. Therefore, in the above view of the matter, the Registrar of this Court is directed to file appropriate proceedings against the respondent No.1 - Kaleshkumar Nanarbhai Patel in Special Civil Application No.6175/1999 under the provisions of the Indian Penal Code for the offence committed by him, as discussed in this judgment.

##. I have considered the submissions made by the learned advocates for the parties and looking to the observations made by this Court in the decisions referred above so also considering the undisputed facts which are on record so also looking to the entire record placed before this Court, according to my opinion, order passed by the appellate authority in Appeal No.54 / 1998 dated 30th January, 1999 is required to be quashed and set aside.

##. In the result, both these petitions Special Civil Application Nos.6175 / 99 and 5274 / 99 are allowed and the order passed by the appellate authority, Baroda in Appeal No.54 / 1998 dated 30th January, 1999 is hereby quashed and set aside. Rule in each petition is made absolute accordingly with costs. The cost in each petition is quantified at Rs.10,000/- which required to be paid by the respondents to the respective petitioner. Accordingly, interim relief order, if any, stands vacated. However, it is directed to the Registrar of this Court to file appropriate proceeding against the respondent No. 1 - Kalpeshkumar Naranbhai Patel under the provisions of Indian Penal Code for making an intentional false statement on oath before this Court

within a period of two months from the date of receiving the copy of this order in the Registry of this Court.

Date : 8-11-2001 [H.K.Rathod, J.]

#kailash#

: Further Order :

After this order is pronounced, learned advocate Mr.B.S.Patel appearing on behalf of the respondents has requested this Court to suspend the implementation of this order for some time so as to enable the respondents to approach the higher forum. However, considering the fact that this Court has merely set aside the order of appellate authority and the fact that the petitioner Gujarat Housing Board is in possession of the land in question since long so also the fact that the construction work is in progress and so far as direction issued to the Registrar to lodge complaint against the respondent No.1, this Court is of the opinion that the prayer made by Mr.Patel is not required to be granted and therefore, the request is rejected accordingly.

Date : 8-11-2001 [H.K.Rathod, J.]

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